

REMARKS

Claims 28-30 will be pending following entry of this amendment. Claims 31-56 are canceled. Claims 28-30 are amended to incorporate limitations from claim 32. No new matter is added. Applicants reserve right to file one or more divisional and/or continuation applications directed to the canceled subject matter.

REJECTION OF CLAIMS UNDER 35 U.S.C. § 102(b)

Morimoto et al.

Claims 28-38 and 55-56 are rejected under 35 U.S.C. § 102(b) over Morimoto *et al.* (*Phytochemistry*, 1988, vol. 27, no. 3, 907-910). The Office Action alleges that the reference discloses compounds that meet structural limitation of formula I and II. It is further alleged that the amounts of the compounds isolated in the reference meet the claimed therapeutic amounts. The Office Action points to compound 3, 6 and 14 disclosed in the reference. Reconsideration and removal of the rejection is requested in view of the amendments and remarks herein.

Without conceding the propriety of the rejection, but to expedite prosecution, Applicants have amended claim 28 to specifically recite compositions consisting of a therapeutically effective amount of epicatechin-4 β - \rightarrow 8-epicatechin. Applicants respectfully submit that Morimoto *et al.* does not disclose epicatechin-4 β - \rightarrow 8-epicatechin. Further, Morimoto *et al.* does not disclose a pharmaceutical composition consisting of a therapeutically effective amount of epicatechin-4 β - \rightarrow 8-epicatechin as claimed.

Thus, Morimoto *et al.* does not disclose, either literally or inherently, every element of the claimed composition. Therefore, Morimoto *et al.* does not anticipate the pharmaceutical composition as claimed in amended claim 28. Because claims 29 and 30 depend from claim 28, Morimoto *et al.* does not anticipate claims 29 and 30. Applicant respectfully requests that the rejection be reconsidered and withdrawn.

Hashimoto et al.

Claims 28-38 and 55-56 are rejected under 35 U.S.C. § 102(b) over Hashimoto *et al.* (*Chem. Pharm. Bull.*, 1989, vol. 37, no. 12, 3255-3263). The Office Action alleges that the reference discloses compounds that meet structural limitation of formula I and II and the amounts of the compounds isolated meet the claimed therapeutic amounts. The Office Action

alleges that the references disclose that the proanthocyanidins were isolated and/or purified in water or ethanol. The Office Action points to the disclosure on page 3262, where the reference describes treating solutions of compounds 30, 31 and 32 in water with tannase. None of these compounds are epicatechin-4 β -8-epicatechin. Reconsideration and removal of the rejection is requested in view of the amendments and remarks herein.

Applicants appreciate that Hashimoto *et al.* discloses compound 1, *i.e.*, epicatechin-4 β -8-epicatechin. However, Applicants respectfully submit that Hashimoto *et al.* does not describe a pharmaceutical composition consisting of a therapeutically effective amount of epicatechin-4 β -8-epicatechin. Hashimoto *et al.* discloses that compound 1, *i.e.*, epicatechin-4 β -8-epicatechin, was separated from 80% acetone extract of oolong tea. *See*, pages 3255 and 3260. The Office Action alleges that Hashimoto *et al.* teaches isolation of a compound of formula I, where the proanthocyanidin is a dimer or trimer, thus meeting the limitations of claims 31-38 and 56. It is further alleged that proanthocyanidins were isolated and/or purified in water or ethanol, thus forming pharmaceutical composition.

Applicants respectfully submit that Hashimoto *et al.* does not disclose a water or ethanol solution of epicatechin-4 β -8-epicatechin. Furthermore, it does not disclose a water or ethanol solution of a therapeutically effective amount of epicatechin-4 β -8-epicatechin. Thus, Hashimoto *et al.* does not disclose, either literally or inherently, every element of the claimed composition. Therefore, Hashimoto *et al.* does not anticipate the pharmaceutical composition as claimed in amended claim 28. Because claims 29 and 30 depend from claim 28, Hashimoto *et al.* does not anticipate claims 29 and 30. Applicant respectfully requests that the rejection be reconsidered and withdrawn.

Applicant : Alan D. Snow *et al.*
Serial No. : 10/077,596
Filed : February 15, 2002

Attorney's Docket No.: 017170-0010-999
CAM No.: 712576-999005

CONCLUSION

In light of the above remarks, the Applicants respectfully request that the Examiner reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney if a telephone call could help resolve any remaining items.

The Commissioner is hereby authorized to charge any other required fee(s) to Jones Day Deposit Account No. 50-3013 (712576-999005).

Respectfully submitted,

Date: February 3, 2009

/Megha Bhumralkar/

By: Megha Bhumralkar (Reg. no. 44,536)
For: Dale L. Rieger (Reg. No. 43,045)

JONES DAY

222 East 41st Street
New York, New York 10017
858.314.1200